

ASSEMBLY BILL

No. 1545

Introduced by Committee on Revenue and Taxation (Charles Calderon (Chair), Beall, Coto, Ma, Portantino, and Saldana)

March 5, 2009

An act to amend Sections 16361 and 16374 of the Probate Code, relating to the Uniform Principal and Income Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 1545, as introduced, Committee on Revenue and Taxation. Uniform Principal and Income Act: trust administration: income and payments.

(1) Existing law, the Revised Uniform Principal and Income Act, requires a trust to be administered, as specified, with due regard to the respective interests of defined income beneficiaries and defined remainder beneficiaries. For purposes of the act, “payment” is defined to mean a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments, or a payment that a trustee may receive pursuant to an income tax advantaged contractual, custodial, or trust arrangement, as prescribed.

This bill would revise that definition to, instead, specify that, for purposes of the act, “payment” also includes any payment from a separate fund, as described, regardless of the reason for the payment, and would prescribe requirements for the allocation of a payment, as determined by the part of a payment that is characterized as interest, a dividend, or an equivalent payment, as provided.

(2) The act requires that a tax required to be paid by a trustee based on receipts allocated to income be paid from income. The act further requires the trustee, in order to obtain an estate tax marital deduction for a trust, to allocate more of a payment to income, in accordance with prescribed requirements.

This bill would revise the requirements for determining the amount of a payment that is required to be allocated to income for purposes of qualifying for a marital tax deduction under federal law, as specified, and for calculating the amount of tax required to be paid by a trustee based on income, as determined by receipts allocated to income. For purposes of the marital tax deduction, the bill would require a trustee to determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the act, except as provided. The bill would require the trustee to allocate the balance to the principal.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16361 of the Probate Code is amended
2 to read:

3 16361. (a) For purposes of this section, ~~“payment” means~~
4 ~~either of the following~~ *the following terms have the following*
5 *meanings:*

6 (1) ~~“Payment” means~~ *a payment that a trustee may receive*
7 *over a fixed number of years or during the life of an individual*
8 *because of services rendered or property transferred to the payer*
9 *in exchange for future payments. The term also includes a payment*
10 *made in money or property from the payer’s general assets or*
11 *from a separate fund created by the payer. For purposes of*
12 *subdivisions (d), (e), (f), and (g), “payment” also includes any*
13 *payment from a separate fund, regardless of the reason for the*
14 *payment.*

15 (2) *“Separate fund” includes a private or commercial annuity,*
16 *an individual retirement account, and a pension, profit-sharing,*
17 *stock bonus, or stock ownership plan.*

18 ~~(2) A payment that a trustee may receive pursuant to an income~~
19 ~~tax advantaged contractual, custodial, or trust arrangement,~~
20 ~~including, but not limited to, a private or commercial annuity, a~~

1 ~~pension or profit-sharing plan, an individual retirement account,~~
2 ~~Roth IRA, or any similar arrangement, regardless of whether the~~
3 ~~payment is made from an “entity” as defined in Section 16350.~~

4 (b) To the extent that a payment is characterized by the payer
5 as interest ~~or~~, a dividend, or a payment made in lieu of interest or
6 a dividend, a trustee shall allocate ~~it~~ *the payment* to income. The
7 trustee shall allocate to principal the balance of the payment and
8 any other payment received in the same accounting period that is
9 not characterized as interest, a dividend, or an equivalent payment.

10 (e) ~~If no part of a payment is characterized as interest, a~~
11 ~~dividend, or an equivalent payment, the trustee shall allocate the~~
12 ~~payment as follows:~~

13 (1) ~~If the payment is received from an individual account, the~~
14 ~~trustee shall allocate the payment to income to the extent that the~~
15 ~~payment, when combined with all other payments received from~~
16 ~~the individual account during that same accounting period, which~~
17 ~~may be referred to as the “cumulative amount received,” does not~~
18 ~~exceed 4 percent of the account value, which may be referred to~~
19 ~~as the “income allocation amount.” To the extent that any portion~~
20 ~~of a payment causes the cumulative amount received to exceed~~
21 ~~the income allocation amount, that portion, together with all further~~
22 ~~amounts received from the individual account during that~~
23 ~~accounting period, shall be allocated to principal.~~

24 (A) ~~As used in this section, the term “individual account” means~~
25 ~~an individual account plan as defined in the Employee Retirement~~
26 ~~Income Security Act of 1974 (29 U.S.C. 1001 et seq.), as amended~~
27 ~~from time to time, and any other plan, account, or arrangement~~
28 ~~whose terms enable the trustee to identify the fair market value of~~
29 ~~the participant’s or owner’s interest therein.~~

30 (B) ~~As used in this section, the term “account value” means the~~
31 ~~fair market value of the individual account as of the later of the~~
32 ~~last day of the trust’s preceding accounting period and the date~~
33 ~~when the right to receive payments from the individual account~~
34 ~~first became subject to the trust.~~

35 (C) ~~If an accounts period consists of less than 365 days, the~~
36 ~~income allocation amount shall be prorated on a daily basis.~~

37 (2) ~~If the payment is received from a plan, account or other~~
38 ~~arrangement that is not an individual account, the trustee shall~~
39 ~~allocate the payment as follows:~~

1 ~~(A) If all or part of the payment is required to be made to the~~
2 ~~trustee, the trustee shall allocate to income 10 percent of the part~~
3 ~~that is required to be made during the accounting period and the~~
4 ~~balance to principal.~~

5 ~~(B) If no part of a payment is required to be made to the trustee~~
6 ~~or the payment received is the entire amount to which the trustee~~
7 ~~is entitled, the trustee shall allocate the entire payment to principal.~~

8 ~~(C) A payment is not “required to be made” to the extent that~~
9 ~~it is made because the trustee exercises a right of withdrawal.~~

10 ~~(d) If, to obtain an estate tax marital deduction for a trust, a~~
11 ~~trustee must allocate more of a payment to income than provided~~
12 ~~by this section, the trustee shall allocate to income the additional~~
13 ~~amount necessary to obtain the marital deduction.~~

14 ~~(c) If no part of a payment is characterized as interest, a~~
15 ~~dividend, or an equivalent payment, and all or part of the payment~~
16 ~~is required to be made, a trustee shall allocate to income 10~~
17 ~~percent of the part that is required to be made during the~~
18 ~~accounting period and the balance to principal. If no part of a~~
19 ~~payment is required to be made or the payment received is the~~
20 ~~entire amount to which the trustee is entitled, the trustee shall~~
21 ~~allocate the entire payment to principal. For purposes of this~~
22 ~~subdivision, a payment is not “required to be made” to the extent~~
23 ~~that it is made because the trustee exercises a right of withdrawal.~~

24 ~~(d) Subdivisions (f) and (g) shall apply, except as provided in~~
25 ~~subdivision (e), and subdivisions (b) and (c) shall not apply, in~~
26 ~~determining the allocation of a payment made from a separate~~
27 ~~fund to either of the following:~~

28 ~~(1) A trust to which an election to qualify for a marital deduction~~
29 ~~is made under Section 2056(b)(7) of the Internal Revenue Code.~~

30 ~~(2) A trust that qualifies for the marital deduction under Section~~
31 ~~2056(b)(5) of the Internal Revenue Code.~~

32 ~~(e) Subdivisions (d), (f), and (g) shall not apply if the series of~~
33 ~~payments would, without the application of subdivision (d), qualify~~
34 ~~for the marital deduction under Section 2056(b)(7)(C) of the~~
35 ~~Internal Revenue Code.~~

36 ~~(f) A trustee shall determine the internal income of each separate~~
37 ~~fund for the accounting period as if the separate fund were a trust~~
38 ~~subject to this act. Upon request of the surviving spouse, the trustee~~
39 ~~shall require that the person administering the separate fund~~
40 ~~distribute this internal income to the trust. The trustee shall~~

1 *allocate a payment from the separate fund to income to the extent*
2 *of the internal income of the separate fund and distribute that*
3 *amount to the surviving spouse. The trustee shall allocate the*
4 *balance to principal. Upon request of the surviving spouse, the*
5 *trustee shall allocate principal to income to the extent the internal*
6 *income of the separate fund exceeds payments made from the*
7 *separate fund to the trust during the accounting period.*

8 *(g) If a trustee cannot determine the internal income of a*
9 *separate fund, but can determine the value of the separate fund,*
10 *the internal income of the separate fund is deemed to equal to at*
11 *least 3 percent, but not more than 5 percent, of the fund's value,*
12 *according to the most recent statement of value preceding the*
13 *beginning of the accounting period. If the trustee cannot determine*
14 *either the internal income of the separate fund or the fund's value,*
15 *the internal income of the fund is deemed to equal the product of*
16 *the interest rate and the present value of the expected future*
17 *payments, as determined under Section 7520 of the Internal*
18 *Revenue Code for the month preceding the accounting period for*
19 *which the computation is made.*

20 *(h) (1) This section does not apply to a payment from a*
21 *liquidating asset.*

22 *(2) For purposes of this subdivision, "liquidating asset" means*
23 *an asset whose value will diminish or terminate because the asset*
24 *is expected to produce receipts for a period of limited duration.*

25 SEC. 2. Section 16374 of the Probate Code is amended to read:
26 16374. (a) A tax required to be paid by a trustee based on
27 receipts allocated to income shall be paid from income.

28 (b) A tax required to be paid by a trustee based on receipts
29 allocated to principal shall be paid from principal, even if the tax
30 is called an income tax by the taxing authority.

31 (c) A tax required to be paid by a trustee on the trust's share of
32 an entity's taxable income shall be paid ~~proportionately as follows~~
33 *in accordance with any of the following:*

34 (1) From income to the extent that receipts from the entity are
35 allocated *only* to income.

36 (2) From principal to the extent that ~~both of the following apply:~~

37 ~~(A) Receipts~~ *receipts* from the entity are allocated *only* to
38 principal.

39 ~~(B) The trust's share of the entity's taxable income exceeds the~~
40 ~~total receipts described in paragraph (1) and subparagraph (A).~~

1 ~~(d) For purposes of this section, receipts allocated to principal~~
2 ~~or income shall be reduced by the amount distributed to a~~
3 ~~beneficiary from principal or income for which the trust receives~~
4 ~~a deduction in calculating the tax.~~

5 (3) *Proportionately from principal and income to the extent that*
6 *receipts from the entity are allocated to both income and principal.*

7 (4) *From principal to the extent that the tax exceeds the total*
8 *receipts from the entity.*

9 (d) *After applying subdivisions (a), (b), and (c), the trustee shall*
10 *adjust income or principal receipts to the extent that the trust's*
11 *taxes are reduced because the trust receives a deduction for*
12 *payments made to a beneficiary.*